



General Assembly

January Session, 2003

Raised Bill No. 1134

LCO No. 4316

Referred to Committee on Finance, Revenue and Bonding

Introduced by:
(FIN)

AN ACT CONCERNING CERTAIN TOBACCO MANUFACTURERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2003*) As used in sections 1 to 7,
2 inclusive, of this act:

3 (1) "Brand family" means all styles of cigarettes sold under the same
4 trade mark and differentiated from one another by means of additional
5 modifiers or descriptors, including, but not limited to, menthol, lights,
6 kings, and 100's, and includes any use of a brand name, alone or in
7 conjunction with any other word, trademark, logo, symbol, motto,
8 selling message, recognizable pattern of colors, or any other indicia of
9 product identification identical or similar to, or identifiable with, a
10 previously known brand of cigarettes;

11 (2) "Cigarette" has the same meaning as provided in section 4-28h of
12 the general statutes;

13 (3) "Commissioner" means the Commissioner of Revenue Services;

14 (4) "Nonparticipating manufacturer" means any tobacco product
15 manufacturer that is not a participating manufacturer;

16 (5) "Participating manufacturer" has the meaning as provided in
17 Section II(jj) of the Master Settlement Agreement, as defined in section
18 4-28h of the general statutes, and all amendments thereto;

19 (6) "Qualified escrow fund" has the same meaning as provided in
20 section 4-28h of the general statutes;

21 (7) "Stamper" means a person that may lawfully purchase
22 unstamped packages of cigarettes and affix Connecticut cigarette tax
23 stamps to such packages before selling them;

24 (8) "Tobacco product manufacturer" has the same meaning as
25 provided in subdivision (9) of section 4-28h of the general statutes; and

26 (9) "Units sold" has the same meaning as provided in section 4-28h
27 of the general statutes.

28 Sec. 2. (NEW) (*Effective October 1, 2003*) (a) Any tobacco product
29 manufacturer whose cigarettes are sold in this state, whether directly
30 or through a distributor, retailer or similar intermediary or
31 intermediaries, shall execute a certification annually on a form
32 prescribed by the commissioner, certifying under penalty of law for
33 false statement that, as of the date of such certification, such tobacco
34 product manufacturer is either a participating manufacturer or is in
35 full compliance with the provisions of sections 4-28h to 4-28j, inclusive,
36 of the general statutes. Such tobacco product manufacturer shall
37 deliver such certificate to the commissioner and Attorney General no
38 later than the thirtieth day of April each year. Each tobacco product
39 manufacturer shall maintain all invoices and documentation of sales
40 and other such information relied upon for such certification for a
41 period of five years unless otherwise required by law to maintain them
42 for a longer period of time.

43 (b) If a tobacco product manufacturer is a participating
44 manufacturer, such manufacturer shall include in its certification a list
45 of its brand families. The participating manufacturer shall update such

46 list thirty days prior to any addition to, or modification of, its brand
47 families by executing and delivering a supplemental certification to the
48 Attorney General and the commissioner.

49 (c) If the tobacco product manufacturer is a nonparticipating
50 manufacturer, such manufacturer shall include in its certification: (1) A
51 list of all of its brand families and the number of units of each brand
52 family that were sold in the state during the preceding calendar year,
53 (2) a list of all of its brand families that have been sold in the state at
54 any time during the current calendar year, (3) an indication, by an
55 asterisk, of any brand family sold in the state during the preceding
56 calendar year that is no longer being sold in the state as of the date of
57 such certification, and (4) the name and address of any other
58 manufacturer of such brand families in the preceding or current
59 calendar year. Each nonparticipating manufacturer shall update such
60 list thirty days prior to any addition to, or modification of, its brand
61 families by executing and delivering a supplemental certification to the
62 Attorney General and the commissioner.

63 (d) If the tobacco product manufacturer is a nonparticipating
64 manufacturer, such manufacturer shall further (1) certify that such
65 nonparticipating manufacturer is registered to do business in this state
66 or has appointed an agent for service of process and provided notice
67 thereof as required by section 3 of this act, (2) certify that such
68 nonparticipating manufacturer has established and continues to
69 maintain a qualified escrow fund and has executed a qualified escrow
70 agreement that has been reviewed and approved by the Attorney
71 General and that governs the qualified escrow fund, (3) certify that
72 such nonparticipating manufacturer is in full compliance with the
73 provisions of sections 4-28h to 4-28j, inclusive, of the general statutes
74 and sections 1 to 7, inclusive, of this act, and any regulations adopted
75 under said sections 4-28h to 4-28j, inclusive, and sections 1 to 7,
76 inclusive, of this act, and (4) (A) provide the name, address and
77 telephone number of the financial institution where the
78 nonparticipating manufacturer has established such qualified escrow

79 fund required pursuant to the provisions of sections 4-28h to 4-28j,
 80 inclusive, of the general statutes and all regulations adopted under
 81 said sections 4-28h to 4-28j, inclusive; (B) the account number of such
 82 qualified escrow fund and subaccount number for the state of
 83 Connecticut; (C) the amount that such nonparticipating manufacturer
 84 placed in such fund for cigarettes sold in the state during the
 85 preceding calendar year, the date and amount of each such deposit,
 86 and such evidence or verification as may be deemed necessary by the
 87 commissioner or the Attorney General, to confirm the foregoing; and
 88 (D) the amounts of and dates of any withdrawal or transfer of funds
 89 the nonparticipating manufacturer made at any time from such fund
 90 or from any other qualified escrow fund into which it ever made
 91 escrow payments pursuant to the provisions of sections 4-28h to 4-28j,
 92 inclusive, of the general statutes and all regulations adopted under
 93 said sections 4-28h to 4-28j, inclusive.

94 (e) A tobacco product manufacturer may not include in its
 95 certification a brand family unless (1) in the case of a participating
 96 manufacturer, the participating manufacturer affirms that the brand
 97 family is to be deemed to be its cigarettes for purposes of calculating
 98 its payments under the Master Settlement Agreement for the relevant
 99 year, in the volume and shares determined pursuant to the Master
 100 Settlement Agreement; and (2) in the case of a nonparticipating
 101 manufacturer, such nonparticipating manufacturer affirms that the
 102 brand family is to be deemed to be its cigarettes for purposes of
 103 sections 4-28h to 4-28j, inclusive, of the general statutes. Nothing in
 104 this section shall be construed as limiting or otherwise affecting the
 105 state's right to maintain that a brand family constitutes cigarettes of a
 106 different tobacco product manufacturer for purposes of calculating
 107 payments under the Master Settlement Agreement or for purposes of
 108 sections 4-28h to 4-28j, inclusive, of the general statutes.

109 Sec. 3. (NEW) (*Effective October 1, 2003*) (a) Not later than October 1,
 110 2003, the commissioner shall develop and make available for public
 111 inspection a directory listing of all tobacco product manufacturers that

112 have provided current and accurate certifications conforming to the
113 requirements of section 2 of this act and all brand families that are
114 listed in such certifications except that (1) the commissioner shall not
115 include or retain in such directory the name or brand families of any
116 nonparticipating manufacturer that has failed to provide the required
117 certification or whose certification the commissioner determines is not
118 in compliance with the provisions of section 2 of this act, unless such
119 violation has been remedied to the satisfaction of the commissioner, (2)
120 neither a tobacco product manufacturer nor brand family shall be
121 included or retained in the directory if the commissioner concludes in
122 the case of a nonparticipating manufacturer that (A) all escrow
123 payments required pursuant to the provisions of sections 4-28h to 4-
124 28j, inclusive, of the general statutes for any period for any brand
125 family, whether or not listed by such nonparticipating manufacturer,
126 have not been fully paid into a qualified escrow fund governed by a
127 qualified escrow agreement that has been approved by the Attorney
128 General, or (B) any outstanding final judgment, including interest
129 thereon, for a violation of sections 4-28h to 4-28j, inclusive, of the
130 general statutes has not been fully satisfied for such brand family and
131 such manufacturer, (3) the commissioner shall update the directory as
132 necessary in order to correct mistakes and to add or remove a tobacco
133 product manufacturer or brand family to keep the directory current
134 and in conformity with the requirements of sections 1 to 7, inclusive, of
135 this act, and (4) every stamper shall provide and update as necessary
136 an electronic mail address to the commissioner for the purpose of
137 receiving any notifications as may be required by sections 1 to 7,
138 inclusive, of this act.

139 (b) It shall be unlawful for any person:

140 (1) To affix a tax stamp to a package or other container of cigarettes
141 of a tobacco product manufacturer or brand family not included in the
142 directory; and

143 (2) To sell, offer or possess for sale in this state, cigarettes of a

144 tobacco product manufacturer or brand family not included in the
145 directory.

146 Sec. 4. (NEW) (*Effective October 1, 2003*) (a) Any resident or foreign
147 nonparticipating manufacturer that has not registered to do business
148 in the state, pursuant to title 33 or 34 of the general statutes, as a
149 foreign corporation or business entity shall, as a condition precedent to
150 having its brand families listed or retained in the directory maintained
151 pursuant to section 3 of this act, appoint and continually engage
152 without interruption the services of an agent in this state to act as
153 agent for the service of process on whom all process and any action or
154 proceeding against it concerning or arising out of the enforcement of
155 the provisions of sections 1 to 7, inclusive, of this act and the
156 provisions of sections 4-28h to 4-28j, inclusive, of the general statutes
157 may be served in any manner authorized by law. Such service shall
158 constitute legal and valid service of process on the nonparticipating
159 manufacturer. The nonparticipating manufacturer shall provide the
160 name, address, telephone number and proof of the appointment and
161 availability of such agent to, and to the satisfaction of, the
162 commissioner and the Attorney General.

163 (b) A nonparticipating manufacturer shall provide notice to the
164 commissioner and Attorney General at least thirty calendar days prior
165 to termination of the authority of an agent and shall further provide
166 proof, to the satisfaction of the commissioner and the Attorney
167 General, of the appointment of a new agent no less than five calendar
168 days prior to the termination of an existing agent appointment. In the
169 event an agent terminates an agency, the nonparticipating
170 manufacturer shall notify the commissioner and Attorney General of
171 such termination not later than five calendar days after such
172 termination and shall include proof, to the satisfaction of the
173 commissioner and the Attorney General, of the appointment of a new
174 agent.

175 (c) Any nonparticipating manufacturer whose products are sold in

176 this state without appointing or designating an agent as required in
177 this section shall be deemed to have appointed the Secretary of the
178 State as such agent and may be proceeded against in courts of this state
179 by service of process upon the Secretary of the State, except that the
180 appointment of the Secretary of the State as such agent shall not satisfy
181 the condition precedent to having the brand families of the
182 nonparticipating manufacturer listed or retained in the directory.

183 Sec. 5. (NEW) (*Effective October 1, 2003*) (a) Not later than twenty-
184 five days after the end of each month, and more frequently if so
185 directed by the commissioner, each stamper shall submit such
186 information as the commissioner requires to facilitate compliance with
187 sections 1 to 7, inclusive, of this act, including, but not limited to, a list
188 by brand family of the total number of cigarettes or in the case of roll
189 your own, the equivalent stick count, for which the stamper affixed
190 stamps during the previous calendar quarter or otherwise paid the tax
191 due for such cigarettes. The stamper shall maintain, and make
192 available to the commissioner for a period of five years, all invoices
193 and documentation of sales of all nonparticipating manufacturer
194 cigarettes and any other information relied upon in reporting to the
195 commissioner.

196 (b) The commissioner may disclose to the Attorney General any
197 information received under sections 1 to 7, inclusive, of this act and
198 requested by the Attorney General for purposes of determining
199 compliance with and enforcing the provisions of said sections 1 to 7.
200 The commissioner and Attorney General shall share with each other
201 the information received under sections 1 to 7, inclusive, of this act,
202 and may share such information with other federal, state or local
203 agencies only for purposes of enforcement of said sections 1 to 7, the
204 provisions of sections 4-28h to 4-28j, inclusive, of the general statutes
205 or corresponding laws of other states.

206 (c) The Attorney General may require at any time from the
207 nonparticipating manufacturer proof of the amount of money in the

208 qualified escrow fund maintained by such manufacturer for the
209 purpose of compliance with provisions of sections 4-28h to 4-28j,
210 inclusive, of the general statutes. Such proof shall be provided to such
211 manufacturer by the financial institution in which such manufacturer
212 has established such fund. Such proof shall include the amount in such
213 fund, exclusive of interest, the amount and date of each deposit to such
214 fund and the amount and date of each withdrawal from such fund.

215 (d) In addition to the information requested to be submitted
216 pursuant to subsection (a) of this section and section 2 of this act, the
217 commissioner may require a stamper, distributor or tobacco product
218 manufacturer to submit any additional information including, but not
219 limited to, samples of the packaging or labeling of each brand family,
220 as is necessary to enable the Attorney General to determine whether a
221 tobacco product manufacturer is in compliance with the provisions of
222 sections 1 to 7, inclusive, of this act.

223 (e) To promote compliance with the provisions of sections 1 to 7,
224 inclusive, of this act, the commissioner may adopt regulations, in
225 accordance with the provisions of chapter 54 of the general statutes,
226 requiring a tobacco product manufacturer subject to the requirements
227 of subsection (c) of section 2 of this act to make the escrow deposits
228 required in quarterly installments during the year in which the sales
229 covered by such deposits are made. The commissioner may require
230 production of information sufficient to enable the commissioner to
231 determine the adequacy of the amount of the installment deposit.

232 Sec. 6. (NEW) (*Effective October 1, 2003*) (a) In addition to or in lieu of
233 any other civil or criminal remedy provided by law, upon a
234 determination that a stamper has violated subsection (b) of section 3 of
235 this act or any regulation adopted under section 5 of this act, the
236 commissioner, after a hearing, may revoke or suspend the license of
237 such stamper in the manner provided by section 12-295 of the general
238 statutes. Each stamp affixed and each offer to sell cigarettes in
239 violation of subsection (b) of section 3 of this act shall constitute a

240 separate violation. The commissioner may also assess such stamper a
241 civil penalty in an amount not to exceed the greater of five hundred
242 per cent of the retail value of the cigarettes, or five thousand dollars,
243 upon a determination of violation of subsection (b) of section 3 of this
244 act or any regulations adopted under section 5 of this act.

245 (b) Any cigarettes that have been sold, offered for sale or possessed
246 for sale in this state, in violation of subsection (b) of section 3 of this act
247 shall be deemed contraband under section 12-305 of the general
248 statutes and such cigarettes shall be subject to seizure and forfeiture as
249 provided in said section 12-305, and all such cigarettes so seized and
250 forfeited shall be destroyed and not resold.

251 (c) The Attorney General, on behalf of the commissioner, may seek
252 an injunction to restrain a threatened or actual violation of subsection
253 (b) of section 3 of this act and subsections (a) and (d) of section 5 of this
254 act by a stamper and to compel the stamper to comply with said
255 subsections. In any action brought pursuant to this section, the state
256 shall be entitled to recover the costs of investigation, costs of the action
257 and reasonable attorneys' fees.

258 (d) It shall be unlawful for a person to: (1) Sell or distribute
259 cigarettes that the person knows or should know are intended for
260 distribution or sale in the state in violation of subsection (b) of section 3
261 of this act, or (2) acquire, hold, own, possess, transport, import, or
262 cause to be imported any such cigarettes. A violation of this subsection
263 shall be a class A misdemeanor.

264 (e) A person who violates subsection (b) of section 3 of this act
265 engages in an unfair and deceptive trade practice in violation of
266 section 42-110b of the general statutes.

267 Sec. 7. (NEW) (*Effective October 1, 2003*) (a) A determination by the
268 commissioner to not include a brand family or tobacco product
269 manufacturer in the directory maintained pursuant to section 3 of this
270 act or to remove such brand family or manufacturer from the directory

271 shall be subject to review in the manner prescribed by section 12-311 of
272 the general statutes.

273 (b) No person shall be issued a license or granted a renewal of a
274 license to act as a stamper unless such person has certified in writing,
275 under penalty of law for false statement, that such person will comply
276 with this section.

277 (c) For the year 2003, (1) the stamper shall file the first report
278 required by subsection (a) of section 5 of this act on or before thirty
279 days after the effective date of this section; (2) a tobacco product
280 manufacturer shall file the certifications described in subsection (a) of
281 section 2 of this act on or before forty-five days after the effective date
282 of this section; and (3) the commissioner shall publish or make
283 available the directory described in subsection (a) of section 3 of this
284 act not later than ninety days after the effective date of this section.

285 (d) The commissioner may adopt regulations, in accordance with
286 the provisions of chapter 54 of the general statutes, to effect the
287 purposes of this section.

288 (e) In any action brought by the state to enforce the provisions of
289 sections 1 to 7, inclusive, of this act, the court may allow the state,
290 when it is the prevailing party, the costs of investigation, expert
291 witness fees, costs of the action and reasonable attorneys' fees.

292 (f) If a court determines that a person has violated the provisions of
293 sections 1 to 7, inclusive, of this act, the court shall order any profits,
294 gain, gross receipts or other benefit from the violation to be paid to the
295 state. Unless otherwise expressly provided, the remedies or penalties
296 provided by sections 1 to 7, inclusive, of this act are cumulative to each
297 other and to the remedies or penalties available under all other laws of
298 this state.

299 (g) If a court of competent jurisdiction finds that the provisions of
300 sections 1 to 7, inclusive, of this act and of sections 4-28h to 4-28j,

301 inclusive, of the general statutes conflict and cannot be reconciled, then
 302 said sections 4-28h to 4-28j, inclusive, shall supercede the provisions of
 303 said sections 1 to 7, inclusive. If any section, subsection, subdivision,
 304 subparagraph, sentence, clause or phrase of said sections 1 to 7,
 305 inclusive, causes said sections 4-28h to 4-28j, inclusive, to no longer
 306 constitute a qualifying or model statute, as those terms are defined in
 307 the Master Settlement Agreement, then that portion of said sections 1
 308 to 7, inclusive, shall not be valid. If any section, subsection,
 309 subdivision, subparagraph, sentence, clause or phrase of sections 1 to
 310 7, inclusive, of this act is for any reason held to be invalid, unlawful or
 311 unconstitutional, such decision shall not affect the validity of the
 312 remaining portions of said sections 1 to 7, inclusive, or any part
 313 thereof.

314 Sec. 8. Section 4-28e of the general statutes is amended by adding
 315 subsection (f) as follows (*Effective October 1, 2003*):

316 (NEW) (f) For the fiscal year ending June 30, 2004, and each fiscal
 317 year thereafter, the sum of one hundred thousand dollars is
 318 appropriated to the Department of Revenue Services and the sum of
 319 twenty-five thousand dollars is appropriated to the office of the
 320 Attorney General for the enforcement of the provisions of sections 1 to
 321 7, inclusive, of this act and sections 4-28h to 4-28j, inclusive, of the
 322 general statutes.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>
Sec. 8	<i>October 1, 2003</i>

Statement of Purpose:

To prohibit any person who places a tax stamp on cigarettes from placing such stamp on cigarettes of a cigarette manufacturer that has not complied with the state's escrow account, escrow agent and agent of process requirements; to require the Commissioner of Revenue Services to publish a list of cigarette manufacturers that are in compliance with state reporting requirements; and to provide the commissioner and the Attorney General with enforcement authority.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]